**HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE**
**AND**
**HON'BLE SHRI JUSTICE G.V. SEETHAPATHY**

**WRIT PETITION NO. 14483 OF 2006**

**BETWEEN**

Rakesh Sanghi, Hyderabad.

**.....**

**Petitioner**

**And**

Union of India, Ministry of Finance & Banking Affairs,
Rep. by its Secretary, New Delhi & others.

**.....Respondents**

**::O R D E R ::**

Counsel for the Petitioner : Shri Fazal Yousufuddin

**Dated:** 20.07.2006

**Per G.S. SINGHVI, CJ**

In this petition filed in the name of public interest litigation, Shri Rakesh Sanghi, an advocate practising in various Courts and

Consumer Forums at Hyderabad, has invoked the jurisdiction of this Court to espouse the cause of his clients and prayed for quashing circulars Nos.DBOD.Dir.Bc.38/13.03.00/2003-04 & DBOD.Dir.Bc.39/ 13.03.00/2003-04 dated 21.10.2003 and DBOD.Dir.Bc.6/13.03.00/ 2004-05 dated 08.07.2004 issued by Reserve Bank of India (for short 'the RBI').

In paragraphs 2, 5 (two paragraphs have been numbered as 5), 8, 11 and 16 of his affidavit, the petitioner has averred as under:

> "2. I humbly submit that in the course of my practice of Advocacy, I have been entrusted with a few briefs wherein, my clients had obtained Credit Cards and Personal loans from various multinational and new generation banks and were distressed with the exorbitant rates of interest being charged by the said Banks on credit card transactions and personal loans transactions.
>
> 5. I submit that pursuant to the foregoing, I had upon instructions, presented a few complaints on the file of the Hon'ble District Consumer Disputes Redressal Forums constituted under the Consumer Protection Act, 1986 seeking to agitate and protest against the atrocious rates of interest being charged by the aforesaid Banks much beyond the prime lending rates fixed by the Reserve Bank of India in the aforesaid manner.
>
> The main grievance agitated in the aforesaid consumer complaints is that the rapacious Banks are charging interest @ 50% to 60% P.A. from it's Credit Card Holders and persons availing personal loans, by camouflaging the said interest under various innocuous and deceptive prefixes such as membership fees, service charges, transaction charges and subscription charges etc. and the amalgamated amount being posted as <u>the internal rate of return</u> in the books of the said Banks would constitute the actual interest being charged, and the said interest component far exceeded the prime lending rates

authorized by the R.B.I.

5. I humbly submit that pursuant to the aforesaid complaints having been lodged against the recalcitrant Banks and also the Reserve Bank of India (as 2nd O.P. in each complaint), the Reserve Bank of India filed its counter opposing the complaints of the consumers by inter alia stating that it has issued two (2) circulars being Nos.DBOD.Dir.Bc.38/ 13.03.00/2003-04 & DBOD.Dir.Bc.39/ 13.03.00/2003-04 both dated 21/10/2003 inter alia classifying Credit Card Loans and Personal Loans for purchase of consumer durables as a Non-priority Sector and the said loans and credit card transactions were delinked or, freed from the prime lending rates regime and consequently, all the Banks have been granted liberty by the Reserve Bank of India to charge UNLIMITED INTEREST in respect of the aforesaid Non-Priority Sector Loans.

8. I therefore submit that in violation of the law laid down by the Apex Court, the venal officials of the Reserve Bank of India have brazenly and illegally permitted rapacious Banks to charge UNLIMITED INTEREST in the aforesaid manner, and the venal officials of the R.B.I. have also permitted rapacious Banks to CAPITALISE INTEREST AT MONTHLY RESTS, and the same constitutes a gross illegality and also constitutes a violation of the provisions contained in Article 144 of the Constitution of India by the venal officials of the Reserve Bank of India as per the ratio of the judgments reported in 1984 (3) SCC at page No.549, 1984 (4) SCC at page No.545, 2004 (5) SCC at page No.568, 2004 (6) SCC at page No.224, 1995 (2) ALT at page No.699 and 1998 (1) ALT at page No.1.

11. I humbly submit that it is impermissible for the venal officers of the Reserve Bank of India to raise the spectre of liberalisation and the General Agreement for Trade and Tariff for justifying the abominable Circulars insofar as GATT and the resultant liberalization merely ensured unlimited entry and access of foreign Multinational Banks

into the Indian market, and did not ensure or, specify unlimited freedom of trade or, business to the Banks sans any Government Control or, regulation of any nature whatsoever, and even the United States of America which is the strongest and wealthiest constituents of GATT, WTO and the World Bank regulates the rates of interest chargeable by Banks and as a matter of fact, the U.S.A. boasts of the lowest Interest rates in the world, and our Nation appears to be virtually the opposite by ensuring the highest (read unlimited) interest rates in the world whereby, the Urban middle class people of India transacting credit card transactions and availing personal loans are categorized as a Non-Priority Sector and taken to the cleaners, and I am confident that such a freedom to trade will virtually have no other parallel or, precedent in the entire world, save a few banana republics which have no other goods to offer except their citizens pockets.

Thus, the submission that the unlimited freedom to trade granted by the Reserve Bank of India and as is being practiced by the Foreign Multinational Banks is reminiscent of the British East India Company.

16. I humbly submit that insofar as any Credit Card Holder or, a Loanee challenging the aforesaid illegality is being perceived as agitating a personal interest under the guise of public interest by using the writ proceedings or, consumer proceedings as a ploy or, device for avoiding payment of his dues to the Banks, the locus standi of a party indirectly effected by the aforesaid illegality is unfortunately, suspected and is subject to speculation.

I, therefore, being an Advocate agitating the very same issue on behalf of my clients in various consumer complaints am not only distressed but also outraged at the extent of corruption which is permeating all spheres of our Society to the extent the venal officials of the Reserve Bank of India have issued such abominable Circulars which are patently opposed to public policy and are causing unjust enrichment of rapacious Banks by UNLIMITED INTEREST and CAPITALISING INTEREST ON MONTHLY RESTS by

charging grossly usurious interest ranging from 50% to 60% per annum and the same militates against the rights of the vulnerable middle class citizens of our nation.

Thus, the submission that I am possessed of requisite locus standi to maintain the subject writ petition in public interest as per the ratio of the judgment of the Apex Court reported in AIR 2004 SC at page No.2615."

We have heard Shri Fazal Yousuddin and carefully perused the record. In our opinion, the writ petition is liable to be dismissed because the affidavit filed by the petitioner contain several indecorous references qua the Banks in general and officers of RBI in particular and there is no justification whatsoever for the petitioner to abuse the process of the Court by making unwarranted allegations against the unnamed officers of the banks, including the RBI.

De hors the aforementioned conclusion, we have considered the petitioner's plea on merits. Learned counsel for the petitioner argued that by issuing the impugned circulars, the RBI has given uncanalized and unbridled authority to the banks to charge interest up to 50 to 60% from the credit card holders and those availing personal loans and, therefore, the same are liable to be declared as unconstitutional. In support of his submissions, learned counsel relied on the judgments of the Supreme Court in **M/s Devi Das V. State of Punjab**[1] and **Akash Coke Industries (P) Ltd. v. Coal Controller**[2].

In our opinion, neither of these decisions has any bearing on the prayer made in the writ petition. In the first case, the Constitution Bench of the Supreme Court struck down Section 5 of

the Punjab General Sales Tax Act by observing that the same does not contain any guideline for levy of tax. In the opinion of the Constitution Bench, the Legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under the section or under any provision of the Act. In the second case, the Supreme Court held that the Coal Controller is bound by the directions issued by the Central Government and he could not issue any contrary circular in the matter of delivery of coal to the company. In none of these cases, the Supreme Court dealt with the question akin to charging of interest by the Banks from credit card holders and loanees.

We are further of the view that the present writ petition is a typical example of abuse of the process of the Court in the name of public interest litigation. The petitioner belongs to the creed of litigants, who file petitions in the Court for earning cheap popularity, which results in wastage of the Court's time. 1980s and 90s witnessed a flood of public interest petitions filed in various High Courts and the Supreme Court. Some of these petitions did represent the concern of social activists in relation to various issues affecting public at large and enabled the Courts to give directions for protection of the constitutional and legal rights of disadvantaged class of the society, but over the years, the Courts have come across innumerable petitions filed in the name of public interest for espousing individual causes. Unwarranted increase in this branch of litigation compelled the Supreme Court to re-think on the issue. In **Guruvayoor Devaswom Managing Committee v. C.K. Rajan**[3], a three-judge Bench reviewed various judicial precedents on the subject and laid down the

following principles for entertaining the public interest litigation:

(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises. (See S.P.Gupta v. Union of India (1981 Supp SCC 87), People's Union for Democratic Rights v. Union of India ((1982) 2 SCC 494), Bndhua Mukti Morca v. Union of India((1984) 3 SCC 161) and Janata Dal v. H.S.Chowdhary ((1992) 4 SCC 305).

(ii) Issues of public importance, enforcement of fundamental rights, of a large number of the public vis-à-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See Charles Sobraj v. Supdt., Central Jail ((1978) 4 SCC 104) and Hussainara Khatoon (I) v. Home Secy., State of Bihar ((1980) 1 SCC 81).

(iii)Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

In Maneka Sanjay Gandhi v. Rani Jethmalani ((1979) 4 SCC 167), it was held: (SCC p. 169, para 2)

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative

convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances." (See also Dwarka Prasad Agarwal v. B.D.Agarwal ((2003) 6 SCC 230)

(iv)The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the depraved (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. (See Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India ((1981) 1 SCC 568), S.P. Gupta, People's Union for Democratic Rights, D.C. Wadhwa(Dr) v. State of Bihar ((1987) 1 SCC 378) and BALCO Employees' Union (Regd.) v. Union of India ((2002) 2 SCC 333)).

(v)When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition. (See Bandhua Mukti Morcha).

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would

apply depends on the nature of the petition as also facts and circumstances of the case (See Rural Litigation and Entitlement Kendra v. State of U.P. ( 1989 Supp (1) SCC 504) and Forward Construction Co. v. Prabhat Mandal (regd.)((1986(1) SCC 100).

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See Ramasharan Autyanuprasi v. Union of India (1989 Supp (1) SCC 251).

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. ( See Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi ((1987) 1 SCC 227)

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See Bandhua Mukti Morcha, Rakesh Chandra Narayan v. State of Bihar (1989 Supp (1) SCC 644) and A.P. Pollution Control Board v. Prof. M.V.Nayudu ((1999) 2 SCC 718).

In Sachidanand Pandey v. State of W.B. ((1987) 2 SCC 295), this Court held: (SCC pp.334-35, para 61)

"It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights and invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles ad

hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

In Janata Dal v. H.S.Chowdhary ((1992) 4 SCC 305), this Court opined: (SCC p. 348, para 109.)

It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

In Narmada Bachao Andolan v. Union of India ((2000) 10 SCC 664), it was held: (SCC pp. 762063, paras 229 & 232)

It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no

law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction."

(x) The court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete justice to the parties, they do not have a power akin to Article 142 of the Constitution of India.

(xi) Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule."

Judgments in **Gurpal Singh v. State of Punjab**[4], **R & M Trust v. Koramangal Residents Vigilance Group**[5], **Dattaraj Nathuji Thaware v. State of Maharastra**[6] and **Dr.B. Singh v. Union of India**[7] represent the recent trend of the judicial

pronouncements in which the Supreme Court has adversely commented on the growing trend of filing public interest litigation which do not have any nexus with public interest. The Courts have also described public interest litigation as publicity interest litigation or personal interest litigation and have come heavily on such cases.

As mentioned above, the present one is also a frivolous piece of litigation filed by the petitioner for the purpose of gaining cheap publicity. In the guise of projecting himself as a champion of public cause, the petitioner has made an attempt to seek protection of the so-called rights of his clients, none of whom is shown to be a destitute or belonging to disadvantaged group of the society, which is incapable of moving the Court for protection or vindication of its rights. It is neither the pleaded case of the petitioner nor it has been shown to us that any of the credit card holders on whose behalf the petitioner has filed litigation in the District Consumer Forums is an indigent person or an illiterate ignorant person who is incapable of knowing his rights and liabilities or suffers from any disability or handicap in seeking protection of his so-called right against the alleged arbitrary charging of interest by the banks. Therefore, we do not find any justification to entertain the writ petition filed in the name of public interest litigation.

With the above observations, the writ petition is dismissed.

The petitioner shall pay cost of Rs.50,000/- for filing frivolous litigation which has necessarily resulted in wastage of valuable time of the Court which could otherwise be devoted for deciding deserving cases. The petitioner shall deposit the amount of costs within one month from today with the Andhra Pradesh

State Legal Services Authority. The Member Secretary, Andhra Pradesh State Legal Services Authority is directed to inform the Court whether or not the petitioner has deposited the amount of cost within the time specified by the Court so that, if it becomes necessary, appropriate directions may be given for recovery of amount from him.

**G.S. SINGHVI, CJ**

**G.V. SEETHAPATHY, J**

The aforementioned order was dictated in the open Court in pre-lunch session. Before the same could be typed and signed, learned counsel for the petitioner again appeared in the post-lunch session and made a request that his client regrets the filing of such petition and that he may be permitted to withdraw the same. Though unusual, we accept the request of the learned counsel and dismiss the writ petition as withdrawn. This would necessarily mean that he will not be required to pay costs imposed by the Court.

**G.S. SINGHVI, CJ**

**G.V. SEETHAPATHY, J**

20.07.2006
svs

[1] AIR 1967 Supreme Court 1895

[2] AIR 2004 Supreme Court 2614

[3] (2003) 7 Supreme Court Cases 546

[4] (2005) 5 SCC 136

[5] (2005) 3 SCC 91

[6] (2005) 1 SCC 590

[7] (2004) 3 SCC 363